IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

CUSTOMS APPLICATION NO. 9 OF 2002.

The Commissioner of Customs. ..Applicant.

vs.

M/s Shefali Arts. ..Respondents.

Mr.A.J. Rana, Senior Counsel with P.S. Jetly for the Applicant.

Mr. Madhur Baya for the respondents.

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.

DATED : 19.6 .2006.

P.C. :

. Heard rival parties.

. This appeal was admitted on 17.2.2005 on the following substantial question of law:

. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the Collector of Customs that the assessee was not liable to pay duty on the machines imported for manufacture of goods for export,under Notification No.159 of 1986 dated 01.03.1986 as amended vide Notification No. 99 of 1987 dated 01.03.1987, even though the assessee had contravened the recitals of the Notifications by clearing goods in the domestic market?

. Both the parties submit that the question being as to whether assessee was well within exemption notification is a question relating to rate of duty of excise, remedy provided under section 351 of the Central Excise Act, 1944 is

available to the petitioners, in view of the law laid down by this Court in the case of Union of India vs. Auto Ignation Ltd. 2002 (142) ELT 292 (Bom).

. Incidentally, it may be mentioned that above view is also in consonance with the view taken in another judgment of this Court in the case of Commissioner of Custom & Excise,Goa vs/ Primella Sanitary Products (P) Ltd. 2002 (145) ELT. 515 (Bom.).

. In the result, this application is rejected with liberty to approach appropriate forum, keeping all rival contentions open. No order as to costs.

(V.C.DAGA,J.)

(J.P.DEVADHAR,J.)